

3. The parties understand there may be some confusion regarding the events of the case and its ultimate settlement, thereby they submit the following timeline in order to clarify any outstanding issues:
4. On December 6, 2019, the United States of America (hereafter “United States”) filed a Declaration of Taking (hereinafter “DT”) for the condemnation of a fee simple interest in real property identified as Tract RGV-WSL-8002.⁴ The DT listed Gerardo Martinez, Marvin Fuller and Hidalgo County Tax Assessor & Collector Pablo “Paul” Villarreal, Jr. as having an interest in the subject property.⁵
5. On December 9, 2019, the United States deposited ninety three thousand four hundred forty nine and 00/100 dollars (\$93,449.00) into the Registry of the Court as estimated just compensation for Tract RGV-WSL-8002.⁶
6. On December 20, 2019, the United States filed a Notice of Disclaimer of Hidalgo County Tax Assessor & Collector Pablo “Paul” Villarreal, Jr.⁷ and on December 30, 2019, he was dismissed from the case.⁸
7. On January 6, 2020, the United States filed a notice of settlement informing the Court that it had reached settlement terms with Defendant Gerardo Martinez regarding the amount of just compensation to be paid by the United States for its taking of Tract RGV-WSL-8002.⁹ The notice further advised the Court that the other remaining original defendant, Marvin Fuller, had informed undersigned counsel that he intended to execute a disclaimer.¹⁰

⁴ *Id.*

⁵ *Id.* Schedule “G”

⁶ Dkt. No. 5.

⁷ Dkt. No. 10.

⁸ Dkt. No. 11.

⁹ Dkt. No. 12.

¹⁰ *Id.*

8. On January 10, 2020, the Court issued an Order¹¹ stating, in pertinent part:

The Court now considers the notice of settlement filed by the United States of America (“United States”). Therein, the United States informs the Court that it “has reached settlement terms with Defendant Gerardo Martinez regarding the amount of just compensation to be paid by the United States for its taking of Tract RGV-WSL-8002. The other remaining defendant, Marvin Fuller, has informed undersigned counsel that he intends to execute a disclaimer.” The United States further explains that after the execution of a disclaimer by Mr. Fuller, the United States intends to file an amended Schedule GG reflecting the change and a “Joint Motion for Order Establishing Just Compensation, Granting Possession, and Distributing Funds on Deposit in the Registry of the Court for Tract RGV-WSL-8002.”

9. To that end, the United States waited to file its Noticed of Amended Schedule “G” until Marvin Fuller executed a disclaimer and was dismissed by the Court.

10. On January 16, 2020, the United States deposited an additional \$31,551.00 in the Registry of the Court for a total sum of \$125,000.00 on deposit in the Registry of the Court.¹²

11. In its February 11, 2020 Status Report, the United States apprised the Court that the tenant and original defendant, Marvin Fuller, agreed to sign a disclaimer upon modifying his lease with Gerardo Martinez to accurately reflect the cropland that was lost as a result of the taking.¹³

12. On February 18, 2020, the Court issued an Order¹⁴ stating, in pertinent part:

The United States now indicates in its recently filed status report that it is still in the process of securing Mr. Fuller’s disclaimer before it finalizes and files a “Joint Motion for Order Establishing Just Compensation, Granting Possession, and Distributing Funds on Deposit in the Registry of the Court for Tract RGV-WSL-8002” with the remaining Defendant, Gerardo Martinez. Accordingly, the United States requests an additional thirty days to finalize all

¹¹ Dkt. No. 13.

¹² Dkt. No. 14.

¹³ Dkt. No. 15.

¹⁴ Dkt. No. 16.

documents and file the joint motion in order to close the case on the Court's docket. The Court finds good cause for this request.

13. In its February 26, 2020 Status Report, undersigned counsel reported that he and a representative from the United States Army Corps of Engineers met with Marvin Fuller to ascertain the status of his negotiations with Gerardo Martinez.¹⁵ During the meeting, Mr. Fuller informed undersigned counsel that he worked out a lease modification with Mr. Martinez, but stated that he wanted to be compensated for the amount of money (\$3,500) he had already put into the lost acreage of tillable cropland at the time of the taking.¹⁶
14. Because Mr. Fuller would no longer be disclaiming his interest in the Subject Property, undersigned counsel proceeded to file the Amended Notice of Schedule "G"¹⁷ and an Amended Disclosure of Interested Parties¹⁸ to clarify that original defendants Gerardo Martinez and Marvin Fuller were the only remaining defendants in the case.
15. On March 5, 2020, the United States deposited an additional \$3,500.00 in the Registry of the Court for a total sum of \$128,500.00 on deposit in the Registry of the Court.¹⁹
16. The same day, the parties filed their Joint Motion for Order Establishing Just Compensation, Granting Possession, and Distributing Funds on Deposit in the Registry of the Court for Tract RGV-WSL-8002.²⁰
17. The Court Order denying the joint motion further instructed the parties "to file a motion requesting the Court add Marvin Fuller" which "should attach evidence of Mr. Fuller's interest in Tract RGV-WSL-8002." Mr. Fuller was originally named in Schedule "G" and

¹⁵ Dkt. No. 17.

¹⁶ *Id.*

¹⁷ Dkt. No. 18.

¹⁸ Dkt. No. 19.

¹⁹ Dkt. No. 22.

²⁰ Dkt. No. 23.

executed a proper Waiver of Service²¹ in this case. As such, it is not necessary to file a motion to add Mr. Fuller as a party. The parties do, however, respectfully submit a copy of Mr. Fuller's lease with Mr. Martinez for the Court's review and consideration.²²

CONCLUSION & PRAYER

Whereas Mr. Fuller is already listed as a party in Schedule "G" and executed a waiver of judicial service of process, the parties respectfully request the Court reconsider its April 1, 2020 order and grant the Joint Motion for Order Establishing Just Compensation, Granting Possession, and Distributing Funds on Deposit in the Registry of the Court for Tract RGV-WSL-8002.

Respectfully submitted,

DEFENDANTS:

By: s/ Roy R. Brandys (w/permission)
ROY R. BRANDYS
Barron, Adler, Clough & Oddo, LLP
SDTX No. 31963
Texas Bar No. 02883550
808 Nueces Street
Austin, Texas 78701
Telephone: (512) 478-4995
Facsimile: (512) 478-6022
Email: brandys@barronadler.com
Attorney-in-Charge for Defendant

By: s/ Marvin Fuller (w/permission)
Marvin Fuller

Weslaco, TX 78596
Telephone: (956) 778-6113
Email: thefullerfarms@gmail.com
Pro Se Tenant

PLAINTIFF:

By: s/ N. Joseph Unruh
N. JOSEPH UNRUH
Assistant U.S. Attorney
SDTX No. 1571957
Texas Bar No. 24075198
1701 W. Bus. Hwy. 83, Suite 600
McAllen, Texas 78501
Telephone: (956) 618-8010
Facsimile: (956) 618-8016
Email: Neil.Unruh@usdoj.gov
Attorney-in-Charge for Plaintiff

²¹ Dkt No. 20.

²² Ex. 1. September 1, 2018 Lease.

CERTIFICATE OF SERVICE

I, N. Joseph Unruh, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 2nd day of April, 2020, a copy of the foregoing was served on the following parties in accordance with the Federal Rules of Civil Procedure.

Roy B. Brandys
Barron, Adler, Clough & Oddo, LLP
808 Nueces Street
Austin, TX 78701

Mr. Marvin Fuller
Weslaco, TX 78596

By: *s/ N. Joseph Unruh*
N. JOSEPH UNRUH
Assistant United States Attorney